IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1848 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANT C HANHAD

Versus

CHAIRMAN, ORIENTAL INSURANCE CO LTD

Appearance:

1. Special Civil Application No. 1848 of 1999

MR RE VARIAVA for Petitioner No. 1

MR KV GADHIA for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 05/02/2004

ORAL JUDGEMENT

The petitioner in this petition under Article 227 of the Constitution of India has challenged the judgment

and award of the Central Industrial Tribunal dated 5th August, 1998 made in Reference (L.C.T.) No. 17 of 1992, whereby, the said Reference has been dismissed.

2. The petitioner was appointed in the employment of the respondents on probation for a period of two years as Development Officer Grade-II on monthly salary of Rs.1,050=00 together with all the perquisites, total of which comes to Rs.2,118=93. It is averred in the statement of claim by the petitioner that he was appointed vide order of appointment letter dated 5th July, 1989 on probation as Development Officer and he was directed to achieve during that period a target of collecting business worth Rs.5.50 lakhs. Upon the expiry of the period of probation, the petitioner could not achieve the said target and could collect business worth Rs.3.13 lakhs only. His service was, therefore, brought to an end and written intimation to that effect was given to him vide letter dated 13th August, 1991. It was the say of the petitioner that he was not extended the facilities while he worked as Development Officer which were being given to the persons who worked on probation, by the respondent Insurance Company. Further that, whatever the work he brought to the Insurance Company, was not accepted by the responsible officer and, therefore, he could not fulfill the target that was set up for him by the respondent. It is his case that even after the expiry of the period of probation, he was allowed to continue in vis-a-vis for 15 days and even thereafter, no order of terminating his service was given to him. He was simply prevented from signing the muster roll by the Branch Manager. It was only by letter dated 13th August, 1991, which came to be served on him on 13th September, 1991 in which it was stated that his service was no more required and was relieved from the employment of the respondents. The said letter was signed by the Branch Manager. It was averred by the petitioner that he was appointed by the Regional Manager and the order terminating his service was passed by the Branch Manager who was subordinate to Regional Manager and, therefore, the order of termination was bad.

2.1. This case was contested by the respondents by filing reply at Exh.8. In the said reply, it was contended that the Insurance Company i.e. respondent was not an "Industry" and the provisions of Industrial Dispute Act, 1947 would not be made applicable and the Reference itself was without jurisdiction. It was further averred that the petitioner was not a "Workman" within the meaning of Section 2 (S) of the Industrial Disputes Act, and, therefore, the Tribunal had no

jurisdiction to entertain Reference. It was further contended that the petitioner was appointed on probation for a period of two years on monthly salary of Rs.2,118=93 and, therefore also he did not fall within the definition of the "Workman". So far as the merits of the case are concerned, it was contended that since the petitioner did not achieve the requisite target which was indicated in the letter of appointment, the respondents thought it fit to discontinue his service and, therefore, letter dated 13th August, 1991 was served on him. It was further averred that there was no mala fide intention on the part of the respondents to relieve the petitioner from the service.

3. Before the Tribunal, the petitioner produced documentary evidence as well as he examined himself as witness to substantiate his case. As against that despite adequate opportunity having been given, the respondents failed to examine any witness on its behalf.

4. At the end of the proceedings, the Tribunal after considering the material placed before it, came to be conclusion that the petitioner had failed to establish his case and also that the order relieving the petitioner from service was not bad in law, because the petitioner was appointed on probation for a period of two years and he was required to collect business worth Rs.5.50 lakhs. During that period, he had failed to fulfill that target therefore, the respondent was justified in terminating his service on the ground of unsatisfactory performance. The Tribunal also came to the conclusion that the respondents had given written intimation to the petitioner terminating his service and, therefore, requisite formalities were complied with. It was further concluded by the Tribunal that since no written order was passed extending the period of probation or confirming the petitioner on that post, the averment of the petitioner to the fact that he was deemed to have been confirmed on the post of the Development Officer could not be accepted. In view of the aforesaid finding, the Tribunal dismissed the Reference. In this petition under Article 227 of the Constitution of India, this award has been challenged.

5. Mr. Variava learned advocate appearing for the petitioner has submitted that the very fact that the petitioner was continued in the employment of the respondents even after expiry of the period of probation, he was deemed to be automatically confirmed on that post and if the respondent intended to terminate his service, requisite procedure by giving him notice and affording

opportunity of hearing ought to have been given. That has not been done. He has further submitted that the order of termination has been passed by the authority subordinate to the appointing authority and, therefore, the same is bad in law and against the provisions of Article 311 (1) of the Constitution of India. Lastly, he has submitted that the petitioner has been meted out with hostile discrimination because one Mr. Makwana who was also on probation who could not achieve the requisite target, but he was allowed to continue in the employment and he was duly confirmed on the said post, but the petitioner was not. In support of his contention, Mr. Variava has also placed reliance on several decisions reference to which will be made in due course of the judgment.

5.1. As against that Mr. Gadhia learned advocate appearing for the respondents has supported the judgment and award of the Tribunal and has submitted that since the order of termination was passed considering the fact that during the period of probation, performance of the petitioner was not satisfactory. This order cannot be said to be in any way illegal or violative of principles of natural justice or Article 14 of the Constitution of India.

6. Having gone through the record of this petition and in particular, award of the Tribunal, it clearly appears that the petitioner was appointed for a period of two years on probation on monthly salary of Rs. 2,118=93. Since he was to work as Development Officer in the Insurance Company, a target of collecting the business worth Rs.5.50 lakhs was indicated in the letter of appointment, which he was required to achieve. It is an admitted fact that he failed to achieve that target on the expiry of the period of probation. Considering the fact that no mala fide have been alleged against the respondents, the respondents was well within its bounds to pass a order of simple termination or give a written intimation to the petitioner about discontinuance of his service. A copy of the letter dated 13th August, 1991 which has been produced by Mr. Variava shows that adequate reasons has been spelt out in that letter with regard to the failure on the part of the petitioner to achieve requisite target and, therefore, his service was no longer required to be continued and it was deemed to be automatically terminated. It is well settled principle of law that only if the order relieving a probationer from the service is passed by way of any penal measure, wherein no opportunity is afforded to him, it can be held as violative of principles of justice.

Otherwise, he is simply to be intimated that his service has been discontinued. The respondents had duly given intimation to the petitioner, and in my opinion, nothing more was required to be done. In support of his contention, Mr. Variava has placed reliance on the decision rendered in the case of Bhupindra Nath Chatterjee v. State of Bihar & Anr., reported in A.I.R. 1977 S.C. 746. The next contention of Mr. Variava is that admittedly when the petitioner was allowed to continue for 15 days even after expiry of the probation period, amounts to automatic confirmation on that post. In support of his contention, Mr. Variava has placed reliance on the decision rendered in the case of State of Punjab v. Dharam Singh reported in A.I.R. 1968 S.C. 1210 wherein it has been laid down that the Punjab Educational Service (Provincialised Cadre) Class-III Rules (1961) and Rule 6 thereof provided for maximum three years probation together with extension and prohibited extension of the probation period beyond three years and in light of that Rule, the Apex Court held that extension beyond that period amounted to automatic confirmation on that post. However, in the present case, no such prohibition is pointed out in law nor it is pointed out by the petitioner that maximum period for which the probation could be given was for two years and not beyond that. In absence of such evidence, the said decision will not apply and the contention of Mr. Variava cannot be accepted. Lastly, the contention of Mr. Variava with regard to hostile discrimination also cannot be accepted because no such averment has been made by the petitioner in the statement of claim, nor any averment to that effect seems to have been advanced at the trial. It appears that for the first time the said contention has been raised in petition under Article 227 of the Constitution of India, no new contention of facts can be permitted to be raised.

In view of the aforesaid, this petition has no merit and it is required to be dismissed and it is hereby ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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